

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2278 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HARGOVANBHAI KHUSALBHAI NAI

Versus

STATE OF GUJARAT

Appearance:

MR SV RAJU for Petitioner

MS BR GAJJAR AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 04/05/2000

ORAL JUDGEMENT

I have heard Mr. Chetan Pandya, learned counsel for Mr. S.V.Raju, learned Counsel appearing on behalf of petitioner and Ms. B.R.Gajjar, learned Assistant Government Pleader. It is an admitted fact that the petitioner Hargovandas Khusalbhai Nai along with Somabhai

Purshottamdas, were jointly allotted a shop -cabin admeasuring 8' x 10' at Palanpur by an order of the Collector. Thereafter both of them opened a barber shop and carried on business. Somabhai Purshottamdas left the possession of half of his share in the shop in favour of the petitioner by executing deed dt. 22-5-1987. The petitioner is now exclusively carrying on business in the shop and the petitioner, being in exclusive possession of entire shop admeasuring 8' x 10', he applied to the Collector for correction in the entry made in allotment order by deleting name of Somabhai Purshottamdas. The Collector, by his order dt. 25/2/1990, cancelled the entire allotment, thereby depriving the petitioner from enjoyment of his share in the shop premises. The petitioner, having felt aggrieved by the order of the Collector, filed an appeal before the State Government, and Additional Chief Secretary (Appeals) rejected the appeal by his order dt. 8/2/1991 and upheld the decision taken by the Collector. Having felt aggrieved by the order of the State Government, the petitioner filed the present writ petition for quashing the order of the Government. It is submitted by the learned counsel for the petitioner that the shop was allotted in the name of the petitioner and Somabhai Purshottamdas in joint name. When Somabhai Purshottamdas has left the possession of his share in the shop, the Collector or the Government has no right to interfere with the share of the petitioner in the shop. Learned counsel submitted that since the shop is a very small one admeasuring 8' x 10', it is not possible to divide the same and to allot half portion of the shop to any other person. Consequently, the learned counsel submitted that the Collector should have changed the allotment order by deleting the name of Somabhai Purshottamdas in view of the fact that the petitioner is agreeable to pay the premium to the Government.

Ms. B.R.Gajjar, learned Assistant Government Pleader submitted that in the allotment order, there is a condition that allotted shop or part thereof cannot be transferred without permission of the Collector. Since one of the allottees namely Somabhai Purshottamdas has transferred his share in the shop, the entire allotment is liable to be cancelled. I cannot agree with the submission made by Ms. Gajjar, learned Assistant Government Pleader because it is an admitted fact that allotment has been made in the name of the petitioner and Somabhai Purshottamdas. If Somabhai Purshottamdas contravenes any of the conditions of the allotment order, then steps can be taken against Somabhai Purshottamdas, but so far as the share of the petitioner in the shop is

concerned, the same cannot be interfered unless he commits breach of any of the conditions mentioned in the allotment order. Therefore, I am of the view that Additional Chief Secretary (Appeals) has committed an error of law in cancelling the allotment of the share of the petitioner in the shop premises.

Ms. Gajjar, learned AGP also submitted that since Somabhai Purshottamdas has transferred his share in the shop with consideration of Rs.1,000/- the transaction is illegal, and therefore, the petitioner cannot get allotment of share of Somabhai Purshottamdas.

It is not in dispute that the shop premises is a small one admeasuring 8' x 10' and if the same is divided into to parts, it will become unusable for any of the allottees. It appears that the petitioner is agreeable to pay the premium to the Government for half of the share in the shop premises which has been left by Somabhai Purshottmdas. Since the petitioner is carrying on his Barber business in the shop/cabin, I am of the view that the Government should consider the reallotment of half of share of the said shop/cabin in favour of the petitioner, especially in view of the fact that the petitioner is agreeable to pay premium to the Government and any division of small shop will be useless for any person. Accordingly, I am of the view that the order passed by the Additional Chief Secretary (Appeals) should be quashed and accordingly the order of the Additional Chief Secretary (Appeals) dt. 8/2/1991 passed in Revision No.SRD-JMN-BNS-DASO-50-90 is hereby quashed. The Collector is directed to consider the application of the petitioner for allotment of 50% share in the shop/cabin to the petitioner. The petitioner may make a fresh application to the Collector, Palanpur within 10 days from the date of receipt of this order along with a copy of this order and the Collector shall consider the same in accordance with law within a period of forty five days from the date of receipt of the application that may be submitted by the petitioner. Till the application is disposed of by the Collector, the petitioner shall not be disturbed from the disputed shop premises.

With the aforesaid observations and directions, the writ petition is disposed of. Rule is made absolute to the aforesaid extent. I make no order as to costs. Direct service is permitted.

Date: 4/5/2000. (P.K.SARKAR, J.)

ccshah